IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 30TH MARCH 2007 / 9TH CHAITHRA 1929

Con.Case(C).No. 577 of 2007(S)

AGAINST THE ORDER IN WPC.10406/2007 Dated 27/03/2007

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PETITIONER

JOSE THOMAS M., S/O. G.THOMAS,
AGED 44 YEARS, RESIDING AT JOSE BUNGALOW,
PIDAVOOR VILLAGE, PATHANAPURAM TALUK,
KOLLAM DISTRICT.

BY ADV. SRI.K.BABU THOMAS

RESPONDENTS/RESPONDENTS 3 & 4:

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1. SRI. G.RADHAKRISHNAN NAIR, S/O. ANG AGE NOT KNOWN TO THE PETITIONER,
DEPUTY CHIEF ENGINEER (CONSTRUCTION),
SOUTHERN RAILWAY, KOLLAM.

2. SRI. R.K.KANNAN, S/O. AND AGE NOT KNOWN TO THE PETITIONER,
ASSISTANT EXECUTIVE ENGINEER (CONSTRUCTION),
SOUTHERN RAILWAY, KOLLAM DISTRICT.

BY ADV. SRI.ALEXANDER THOMAS, SC,RAILWAYS

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING COME UP FOR ADMISSION ON 30/03/2007, ALONG WITH WP(C).NO.10406 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN, J.

C.O.C.No.577 OF 2007 &
W.P(C).No.10406 OF 2007

Dated this the 30th day of March, 2007

JUDGMENT

The above contempt application is filed on the allegation that the interlocutory order dated 27.3.2007 has been violated. The allegation is that the petitioner appeared at 10 a.m. on 28.3.2007 as directed in the said interlocutory order and after the activities carried on on that day as stated in para 5 of the contempt court case, the measurements were stopped and were to be continued on 24.3.2007, going by what the respondent told the petitioner. According to the petitioner, he was present on 29.3.2007 while the second respondent and his subordinates fixed the instruments to continue with the measurement, however that, though the instruments were fixed at 10 a.m. they waited till 10.30 a.m. without taking any measurement and left the site on a telephonic message from the first respondent calculated to avoid the measurement in terms of the interlocutory order. According to the petitioner, the mandatory

procedures regarding measurements are not being maintained and on 29.3.2007 itself the petitioner presented Annexure A5 letter to the first respondent.

2. The disobedience complained is about the interim order dated 27.3.2007 issued after hearing counsel for parties.

3. If there is any controversy as to whether measurements following the order dated 27.3.2007 have not been appropriately taken, the Railways have to sustain their decision and action on the basis of measurements taken by them earlier, which, according to them, have been recorded in the presence of independent witnesses. At any rate, I am of the firm view that any dispute between the parties cannot further deter the work in question, firstly, because the work has been re-arranged and, secondly, because any further delay in carrying on with the work will adversely affect the exchequer by any intervening monsoon. That apart, the questions raised are essentially disputed questions of facts, which cannot be left to be decided in the writ

petition. I also do not find that the respondent in the contempt case is, at least prima facie, guilty of disobedience.

The writ petition and the contempt case are dismissed. This is, however, without prejudice to the right of the petitioner to move for appropriate relief in accordance with law by resorting to other remedies, if so advised.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.